

EMPLOYMENT SECURITY DEPARTMENT

STATE OF WASHINGTON

TRANSCRIPT OF PROCEEDINGS

of

UNEMPLOYMENT INSURANCE RULES

STAKEHOLDER MEETING

Date and Location

November 30, 2004 Employment Security Department
Tuesday, 9:30 a.m. 400 Mercer Street, Suite 600
 Cascade Room
 Seattle, Washington

BE IT REMEMBERED, that an Unemployment Insurance Rules stakeholder meeting was held at the location and time as set forth above. The Employment Security Department was represented by JUANITA MYERS, Rules Coordinator, as the hearing officer. SUSAN HARRIS was also present.

Reported by:
Marcie L. Johnson, CCR
(License #2744)

EXCEL COURT REPORTING
16022-17th Avenue Court East
Tacoma, WA 98445-3310
(253) 536-5824

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

November 30, 2004 - Seattle	Page No.
Discussion	3
Break/Recess	
Discussion (Continued)	40

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

Introduction

MS. MYERS: My name is Juanita Myers. I'm the rules coordinator for the Unemployment Insurance division. And with me is Susan Harris who assists me on the rules. And Marcie is our court reporter.

Just to let you know, this meeting is being recorded. It's fairly informal still, but we found it worked much better to have an actual record of what was said in the meetings rather than trying to rely on our memories or our notes, which are sometimes cryptic. So we have a new procedure for all our stakeholder meetings and all of the formal hearings now must be transcribed by a court reporter. And as soon as we figure out how to get it all done, the transcripts will be available on our web site.

And if you could just each introduce yourselves for the record. Lynn, we'll start with you.

MS. GREINER: Sure. My name is Lynn Greiner, and I'm the director of the Unemployment Law Project.

MS. RADER-KONOFALSKI: And I'm Wendy Rader-Konofalski of AFT Washington.

MR JOHNSON: Ray Johnson with Boeing Company.

MR. MCBRIDE: Tom McBride, the Association of

1 Washington Business.

2 MR. SEXTON: Dan Sexton, Washington State Association
3 of Plumbers Pipe Fitters and Sprinkler Fitters.

4 MS. MYERS: Well, you all are probably as familiar with
5 the legislation that passed last year as I am. We did one
6 large round where we covered most of the section of the law
7 that took effect in 2004. The tax rules are final. We
8 anticipate the benefit rules will be filed this week, the
9 permanent ones. And as soon as we get that done it's time
10 to move on to part two of the sections that go into effect
11 in 2005. We're hoping it won't be as long of a process, but
12 it may be as controversial once I start talking about
13 part-time workers.

14 MR. SEXTON: Juanita, do we have a time frame? Are you
15 looking at before session or after session?

16 MS. MYERS: What we're probably going to end up having
17 to do again is based on the stakeholder meetings, this
18 meeting and the one that we do in Olympia is draft some
19 emergency rules that would take effect in January 2 because
20 that's when these laws take effect.

21 Yeah, there is going to be some activity during
22 session, unfortunately. I don't know how much just because
23 I get tied up with a lot of session work also, and I know
24 all of you do. So we will do our best not to interfere and
25 at least get past some of the cutoff dates.

1 MR. SEXTON: Well, it might be easier too this session
2 being a longer session.

3 MS. MYERS: And just a reminder or a few housekeeping
4 things that I forgot. When you speak, would you say your
5 name for the record so that Marcie knows who's speaking.
6 And the rest rooms are out the door and down the hall. And
7 you have to punch the code. It's 143.

8 MR. SEXTON: Those weren't any official comments that I
9 made.

10 MS. MYERS: No. So let's go ahead and leap right in.

11 The part-time workers. The legislature last year
12 adopted a new section of the law which is 50.20.119. And it
13 says that for claims that are effective on or after January
14 2, 2005 -- and if you have the bill, it's Section 12.

15 MR. SEXTON: Do you know what page that is? Oh, there
16 it is. I opened it up right to it. Page 13, Wendy.

17 MS. RADER-KONOFALSKI: Thanks.

18 MS. MYERS: For claims that are effective on or after
19 January 2, 2005, somebody who is otherwise eligible cannot
20 be denied benefits for any week because that individual is a
21 part-time worker and is available for, seeks, applies for,
22 or accepts only work of 17 or fewer hours per week by reason
23 of the application of the statutes here. 50.20.010(1)(c) is
24 the available for work and work search requirements section
25 of the statute, 50.21.080 is the work refusal statute, and

1 50.22.020 is the statute that sets forth the job search
2 requirements for individuals who are receiving extended
3 benefits.

4 The statute defines part-time workers as individuals
5 who earned wages in employment in at least 40 weeks in their
6 base year but did not earn wages in employment in more than
7 17 hours in any week in their base year.

8 So somebody who -- and the reason they put 40 weeks is
9 17 times 40 is reaches a minimum of 680 hours to establish a
10 claim. But anybody who has works one week or more at, say,
11 18 hours or 20 hours is not eligible, because they can't
12 have worked more than 17 hours in any week in their base
13 year.

14 Dan.

15 MR. SEXTON: So those hours aren't defined as far as
16 regular working hours. And if I'm working, you know,
17 part-time and then I worked -- I had to work some emergency
18 overtime, something, one week, that's not defined.

19 MS. MYERS: It just says that they can't earn wages in
20 employment in more than 17 hours per week. So I'm assuming
21 for that one week that you had to do overtime you earned
22 wages.

23 MR. SEXTON: So if it was some sort of emergency
24 situation where the boss says, "Hey, you can't go home,
25 you've got to stay" --

1 MS. MYERS: And you get 18 or 20 hours that week, then
2 you don't qualify for this.

3 MR. SEXTON: You get an hour more --

4 MS. MYERS: Yeah, you don't qualify for this.

5 MR. SEXTON: And the way this is written here there
6 won't be any way to address that.

7 MS. MYERS: Not through rule making because it's
8 anyone.

9 MS. RADER-KONOFALSKI: Wendy, from AFT Washington.
10 What would be the significance if a part-time worker didn't
11 attain to these criteria for some reason? I mean, does that
12 mean that they.

13 MS. MYERS: I will go there in just a second. The
14 different categories of workers.

15 First off, we think because of how narrowly it's drawn,
16 we have set up a process that's not going to be -- I don't
17 know how far we are going to be into it in rule making
18 because this is procedure. Basically employers don't report
19 to us by week. They report by quarter, not even by month.
20 So how we would interpret it is there's 13 weeks in each
21 quarter and 17 hours per week. 17 times 13 would get to
22 221. So first thing we would look into when somebody
23 applies, we would look to see if all their quarters are 220
24 or below, then we would have somebody that's probably
25 eligible. If they have got 222, we know there's at least

1 one week when we have too many hours. There could be as
2 many as 300 people, possibly as many as 400 people. We are
3 not certain yet because there's probably a population that
4 never applied because they knew they would have to look for
5 full-time work who may now apply. But I don't know that.
6 And we won't have any way of knowing until the law goes into
7 effect until and people start applying -- people who are
8 part-time employed like they worked 20 hours or 25 hours and
9 this law doesn't cover them. So that's the initial
10 screening.

11 Then we will ask that individual some questions
12 including one of the questions will be "Did you in any week
13 during your base year did you work more than 17 hours?" And
14 if their answer is no, then we list them as, okay they are
15 potentially eligible, and we will give them the instruction
16 that they have to look for 17 or fewer hours.

17 But we will also send a note or letter out to the
18 employer to verify like we do a standby or we do with
19 referral units that we send to the union. We will send a
20 letter to the employer saying this individual has applied
21 and says that during the period of time they worked for you,
22 from start date to the end date in the base year, they never
23 worked more than 17 hours per week. If that is incorrect,
24 please let us know and let us know which weeks. So that's
25 essentially what the process is.

1 Let me clarify the distinction that we have here.
2 People who are -- first there's a category we call partially
3 unemployed. And that's people who are -- their hours are
4 reduced to less than full-time work and pretty much on a
5 temporary basis. So for example they were hired to work 40
6 hours a week and because of season or because of economic
7 slowdown or cost savings -- for whatever reason their hours
8 are cut, and so maybe they're only working 25 hours. And
9 those individuals are still considered employer attached.

10 We don't require them -- because there's an expectation
11 that they are going to be going back to full-time work with
12 that employer. We don't require that they look for work.
13 We don't require them to take other work. We simply require
14 that they be available for all work offered by their regular
15 employer.

16 So for example that individual -- and we just basically
17 have them report their earnings for that week. And we do
18 what we call an earnings disregard. We ignore the first \$5
19 and deduct 75 percent of the remainder from their weekly
20 benefit amount and pay them the balance. If you are cut
21 down from 40 to 30, that's not very much. But if you are
22 cut lower than that, a lot of times that could be that you
23 would get at least a portion of your unemployment benefits
24 to supplement the fact that you lost wages.

25 And then there are what we always before called

1 part-time workers. It's anybody who normally as a practice
2 works less than full-time. They weren't hired to work
3 full-time and then had their hours reduced. They just work
4 part-time. And it could have been anything from 15 to 36 --
5 39 hours a week. Those individuals, if they are laid off,
6 are still required to look for full-time work if they want
7 to draw unemployment benefits. There was nothing in the law
8 that changed that requirement that individuals had to be
9 available for full-time work.

10 Part-time workers eligible under this statute are
11 permitted to look for work that is 17 or fewer hours per
12 week. Those are the only individuals who can seek and
13 accept work that is less than full-time.

14 MR. SEXTON: Juanita.

15 MS. MYERS: Yes.

16 MR. SEXTON: You know, I'm still hung up on, I guess,
17 the definition. And it's, you know -- I guess, you know,
18 I'm not seeing it here. I guess this is the policy or how
19 this is applied. Someone who, you know, worked 222 hours in
20 a quarter -- so I worked -- so all along going along I
21 worked -- it's 221 hours in a quarter, and then all of a
22 sudden, you know, because of some emergency and my
23 employer -- you know, we, you know, couldn't shut down for
24 an hour or something -- I had to stay over an hour. And all
25 of a sudden I've got one quarter that's 222. And you are

1 saying that the way it's applied -- you know, I see that
2 under the definitions here, "did not earn wages in
3 employment in more than 17 hours per week in any weeks in
4 the individual's base year." But now you're saying that one
5 hour in one quarter would prohibit me from looking for
6 part-time employment when part-time employment has always
7 been my occupation.

8 MS. MYERS: That is correct. For example --

9 MR. SEXTON: And I don't see where that says that
10 specifically. Because the way you are interpreting that if
11 I'm correct is because it says here, "did not earn wages in
12 employment in more than 17 hours per week in any weeks in
13 the individual's base year."

14 MS. MYERS: And you are talking about a situation where
15 somebody worked, earned wages in employment in 18 hours
16 during one of those base year weeks, so they are simply
17 screened out from the provisions of this law.

18 MR. SEXTON: That's it.

19 MS. MYERS: That's it.

20 MR. SEXTON: Okay. Well, the disconnect in my mind is,
21 you know, maybe I've got to put everything together here,
22 but I don't see where it's saying that just because you had
23 222 hours in one quarter one time once in your life that
24 you're prohibited, you know, for looking for part-time
25 employment.

1 MS. MYERS: Prior to the passage of this law and
2 actually in effect to today, anybody who applies for
3 unemployment benefits has to be able and available for
4 full-time work.

5 MR. SEXTON: Right.

6 MS. MYERS: Even if they have only ever worked 15 hours
7 a week all year long, and they come in and apply for
8 unemployment, we tell them they have to look for full-time
9 work.

10 MR. SEXTON: Those people were not eligible for
11 unemployment.

12 MS. MYERS: As long as they said, "Yes. I'm able and
13 available, and I will be actively seeking full-time
14 employment."

15 MR. SEXTON: Right.

16 MS. MYERS: And if they meet those requirements, then
17 they could be eligible for unemployment. If they said, "No,
18 I can't work full-time; I can only work 15 or 20 hours a
19 week," we would deny their benefits and say, "You're not
20 eligible, because case law has developed that work is
21 full-time work."

22 Now, this statute cuts out a narrow exception from that
23 requirement to look for full-time work. And it is only --
24 whether you disagree with it or not, it is only for people
25 who did not earn wages in employment in more than 17 hours

1 in any week in their base year. And that's where it says --
2 the first paragraph says these eligible workers can seek
3 work of 17 or fewer, and for purposes of this section
4 part-time worker means. So this is the exception that's
5 carved out for this group of individuals.

6 Wendy.

7 MS. RADER-KONOFALSKI: So that just means it's status
8 quo for the people who have been applying, for example,
9 part-time faculty that have been applying. They've been
10 receiving it. They've had to show that they were going to
11 be working full-time. This doesn't change anything for
12 them. They are still eligible. But if there is a person
13 who does show that they are under the 17 hours, they could
14 then technically be looking for part-time work.

15 MS. MYERS: Correct.

16 The distinction is partially unemployed people whose
17 hours were reduced only have to look for -- excuse me. They
18 don't have to look for work at all. They only have to be
19 available for work from their regular employer.

20 The normal part-time workers, anybody who works 18 to
21 39 hours in their regular job, if they apply for
22 unemployment benefits, they have to look for full-time work
23 to be eligible. These part-time workers eligible under this
24 statute are the only people who can look for less than
25 full-time work, and they are able to look for work of 17 or

1 fewer hours per week.

2 We have a lot of questions. You would think this
3 little statute wouldn't be hard to implement, but it's been
4 a major difficulty. We have been working on it since March,
5 I think, because of the way it was worded. And I know
6 business here is going to tell me that wasn't their intent,
7 but that's how you worded it.

8 An individual under this statute is eligible for
9 benefits if they are available for, seek, apply for, or
10 accept work of 17 or fewer hours per week. And they can't
11 be denied by reason of those laws I cited before.

12 "Accept" is in there. So I'm a worker that has always
13 worked 17 or fewer hours per week, and I accept a job of 5
14 hours per week, okay. That's okay with me. You know, you
15 can do that. You can say, "I have accepted that job."
16 There is no longer a way to bar them from drawing
17 unemployment benefits even if they say, "I'm no longer going
18 to look for work." Because the way it is worded it says if
19 they accept work of 17 --

20 MR. SEXTON: Where are you at?

21 MS. MYERS: I'm in the first part of the statute,
22 sub(1). If that individual accepts work of 17 or fewer
23 hours per week, we cannot deny their benefits by reason of
24 50.20.010(1)(c), which is the work search and availability
25 statute.

1 Let's get back to the partially unemployed people.
2 Let's say I worked and my hours -- not partially unemployed
3 because they don't have to look for work. Part-time
4 workers. I took a part-time job of 25 hours a week. And I
5 say I will look for full-time work, but I find another job
6 of 30 hours a week, and I continue to draw benefits. But
7 say I'm not going to look for work. How we would deny them
8 benefits is by citing 50.20.010(1)(c), which is the
9 requirement that they be available for and actively seek
10 work.

11 The statute here as it's worded, as long as that person
12 -- if they have accepted 17 or fewer -- so if they accept a
13 job of one hour a week, they could continue to draw
14 unemployment benefits without looking for work, because the
15 statute says if they accept only work of 17 or fewer hours
16 per week they can't be denied by reason of the application
17 of 50.20.010(1)(c).

18 So they would report those earnings, and it would be
19 deducted from their benefits, but they would not be required
20 -- we could no longer require a job search from them. They
21 might want to look for work because who could live on one
22 hour a week.

23 MS. GREINER: That's what I was going to say.

24 MS. MYERS: The other piece of that is an individual --
25 say they work in a fast food restaurant at 15 hours a week.

1 Their weekly benefit amount at minimum wage is probably
2 going to be around the minimum of 111. So they find another
3 job at minimum wage, and it's still 15 hours a week. They
4 don't have to look for work anymore, but because of the
5 income disregard -- we disregard the first \$5 of their
6 earnings and 75 percent of the balance -- they are probably
7 going to be eligible for another about \$10 to \$15 of
8 unemployment benefits per week for their entire benefit year
9 or -- or until that money runs out without having to look
10 for work. So it's kind of a wage supplement.

11 Dan, and then we will get to you.

12 MR. SEXTON: Well, I'm thinking a couple of thoughts.
13 Well, what if, say, I found a job for an hour a day?
14 Wouldn't I make the argument that I am readily available,
15 that I'm available for work even though I'm working an hour
16 a day?

17 MS. MYERS: Well, what I'm saying is, yeah, you could.
18 We aren't going to stop you from looking for work. You
19 could continue to look for work.

20 MR. SEXTON: Well, I'm just saying, if someone is
21 working one, two, three, four, five hours a day even -- I
22 haven't done the math in my head yet. I don't know if that
23 -- maybe that's too much. But maybe working an hour a week
24 or a few hours a day or whatever, that would not
25 automatically disqualify you.

1 MS. MYERS: Basically, what I'm saying --

2 MR. SEXTON: Okay. I think I misunderstood you before.
3 I thought you said that that would trigger that you're not
4 available for work.

5 MS. MYERS: No. Once you take a job of 17 or fewer
6 hours per week, this small portion of claimants, essentially
7 your availability and your work search becomes moot, because
8 we can't deny your benefits under that one -- if you take a
9 job of 17 or fewer hours per week, we cannot deny benefits
10 by reason of the application of RCW 50.20.010(1)(c), which
11 is the one we use to deny benefits for people who stop
12 looking for work. We can't do that for these people if they
13 have accepted a job of 17 fewer hours per week.

14 MS. GREINER: Looking at the practicality of it all, if
15 we are talking 3- or 400 workers and just some percentage of
16 them might try and do this for \$10 or \$15 a week, it doesn't
17 seem in the scheme of things that it's hardly worth talking
18 about. It's not a big deal.

19 MS. MYERS: I don't think it's going to be a big deal.
20 I think people are going to be look for more hours a week
21 simply because they are -- unless it's a second income or
22 third income to a family, you certainly can't live on 17 or
23 fewer hours per week. But I don't think many will, but
24 basically what we're saying is as we program our computer,
25 if they report -- if one of these people -- we flag them.

1 If they are one of these individuals, if they report
2 earnings for that week and they say, No, I'm not available;
3 No, I didn't look for work, it won't set an issue. An issue
4 will not be set. It will just be passed through and paid.

5 Tom.

6 MR. McBRIDE: Thanks. I have a two-part question.
7 First, the number that you used, 2-, 3-, 400 employees, that
8 is based on the first threshold of questions figuring out
9 whether or not there was one week in excess of 17 hours when
10 all other weeks were also 17, right? Because you could also
11 have 12 weeks at 10 hours and one week at 18 hours that
12 wouldn't show up in that process.

13 MS. MYERS: That's correct.

14 MR. McBRIDE: So we might have an artificially low
15 number. I appreciate what you're saying. But you are going
16 to send out the questionnaires to employers and claimants to
17 try to pick those out.

18 MS. MYERS: And actually I'm not a statistician by any
19 stretch of the imagination. I believe that when we looked
20 at the wages per quarter it was much higher. Was it about
21 7,000?

22 MS. HARRIS: Yes.

23 MS. MYERS: About 7,000 workers who meet that first
24 threshold of 221 or below each quarter of a base year. Now,
25 obviously they are not all going to be laid off at once.

1 Well, I don't think so. And then we get down to a
2 percentage of who's applying for benefits. And then they
3 just did an estimate, and maybe it was a couple hundred that
4 they thought would then hit the 17 or fewer hours per week,
5 because you absolutely do not know. Because employers
6 report by the quarter, you're absolutely right. They could
7 have 12 hours one week, 20 hours the next week, 25 and 0,
8 and it could be a really varying occupation. I think the
9 ones you are most likely to pick up -- a lot of times you
10 might pick up fast food workers who a lot of times work less
11 than 17 hours a week.

12 I already had a call once from a person who owns a
13 motel, I think, in a resort area who has had one worker
14 who's always worked for her for 15 hours a week. She's
15 worked for her for years for 15 hours a week, and she gets
16 laid off every winter. And she said, "You mean I'm going to
17 have to pay her unemployment benefits?"

18 And I said, "Yes." It will be charged against your
19 account. You are not paying it directly. If she says that
20 she's willing to look for another part-time job during that
21 three-month layoff, and she may be able to find some, then
22 yes. She's eligible for unemployment benefits.

23 So we know there's some group of people out there
24 that's eligible. We just don't know how big it's going to
25 be. We're getting a lot of calls from people who work 20

1 and 25 hours a week and think that they're eligible because
2 they heard a law is going into effect that allows part-time
3 worker benefits. But at this point we don't anticipate a
4 large group, but we just don't know.

5 MR. McBRIDE: And I'm not challenging your numbers. I
6 know you're just giving us an initial number.

7 MS. MYERS: Right. It could be much higher. It could
8 be significantly lower.

9 MR. McBRIDE: I'm just pointing out it could be exactly
10 what you just said. It could be higher. It could be lower.

11 The second portion of my question is if you read on
12 this last issue you have identified and that is that a
13 strict reading of the rule in the opinion of ESD at this
14 point is if someone is able to work as provided by RCW
15 50.20.010(1)(c), then benefits cannot be denied. I think
16 that's what you are proposing based on the statute in
17 Section 12(1). It seems to me that would apply to any case,
18 anyone who doesn't affirmatively take steps to find
19 part-time work if someone is able. Doesn't that render the
20 rest of the statute meaningless? Then you've got
21 "...relating to availability for work and active search for
22 work..." Why would active-search-for-work language be in
23 there, if I understand ESD's interpretation?

24 MS. MYERS: You are looking at 50.20.010(1)(c)?

25 MR. McBRIDE: Well, I did because that was the subject

1 reference. That was the one you talked about having the
2 word "able" in there. Not an affirmative duty to search. I
3 think that's what I understood.

4 MS. MYERS: They still have to be able to work. If
5 they aren't able to work, that's not mentioned in this
6 part-time worker. So if they are not able to work, then
7 they are still denied benefits.

8 MR. McBRIDE: Right.

9 MS. MYERS: But we can't deny them under their failure
10 to look for work.

11 MR. McBRIDE: And you have to excuse me because I
12 wasn't here when the statute was put into place, so I really
13 am trying to understand this. Doesn't that interpretation
14 render Section 12(1) -- the rest of that language behind the
15 RCW references, doesn't it render that meaningless because
16 there's a reference to active search for work? Why would
17 there be language referring to an active search for work if
18 all you have to do is be able to work?

19 MS. RADER-KONOFALSKI: It's in Section 12(1). It's
20 just the rest of the sentence after the reference to RCW.

21 MR. McBRIDE: And Juanita, I'm looking back at Section
22 12.

23 MS. MYERS: Right. Okay.

24 MS. RADER-KONOFALSKI: Just reading the entire sentence
25 there.

1 MS. GREINER: If I may comment, it's disjunctive,
2 though. It says, "or failure to apply for or refusal to
3 accept suitable work." It's not conjunctive. So I think
4 that's the Department's basis for their interpretation and
5 it's correct, I think.

6 MS. MYERS: Right. "...availability for work and
7 active search for work, or failure to apply for or refusal
8 to accept suitable work."

9 MR. McBRIDE: Is that ESD's position?

10 MS. MYERS: Yes. That's our adaptation.

11 MR. SEXTON: Sounds like the way it's written, yeah.

12 MS. MYERS: Okay. And, again, you will have to ask us
13 maybe in 12 months what kind of results that had: How many
14 people actually qualified under this section of the law; how
15 many times somebody reported earnings and no work search
16 where an issue was not set. I'm just bringing that up to
17 you.

18 MR. McBRIDE: No. And do you mind if I continue?

19 MS. MYERS: Not at all.

20 MR. McBRIDE: I appreciate that, and I really am trying
21 to get a sense here. I'm not in agreement with that
22 interpretation.

23 MS. MYERS: Okay.

24 MR. McBRIDE: Because if you will look at it, it talks
25 about, "...or accepts only work of 17 or fewer hours per

1 week by reason of the application of RCW 50.20.010(1)(c)..."
2 et cetera. The "or" refers to the final statutory
3 reference, and then it says, "...relating to availability
4 for work and active search for work." So I don't think it
5 is disjunctive the way I read it. Because the "or's" relate
6 to a series of statutory references, then it's combined by
7 saying "...relating to availability for work and active
8 search for work..."

9 I'm not asking for anyone to opine today. I don't want
10 you to think that. I'm just trying to give you my
11 interpretation and food for thought. And I'm sure we will
12 have more opportunity to discuss it.

13 MS. MYERS: Yes.

14 We have had a lot of other questions come up for
15 availability requirements for this particular group of
16 individuals. We have a lot of case law that says that an
17 individual has to be available for work for all shifts or
18 all hours of work that are customary to their occupation.
19 And I don't know if that was meant to apply here or if
20 there's supposed to have been some carving out of a sort of
21 exception for these individuals.

22 For example, say this person has worked in a restaurant
23 and because of child care arrangements or whatever only has
24 worked Saturdays and Sundays. So they have always put in 16
25 hours per week forever. They get laid off. They come in,

1 they meet this criteria, they say, "I'm going to look for
2 another part-time job, but I can only work on Saturdays and
3 Sundays." They are not available for waitperson shifts
4 Monday through Friday. Is the intent to let these people
5 continue to work the similar type of work and hours that
6 they worked before, or should they be denied benefits
7 because they are not available for work Monday through
8 Friday, even though that was the way in which their hours
9 have always been earned in the past?

10 Thoughts?

11 MS. RADER-KONOFALSKI: Can you say that one more time?

12 MS. MYERS: Okay. Case law says that an individual --
13 to be eligible for unemployment benefits an individual has
14 to be able and available for all shifts or all hours of work
15 that are customary to that occupation. So if we applied
16 that standard to the situation where a person has only ever
17 worked -- they qualified for benefits based on weekend work.
18 For whatever reason they can't work Monday through Friday.
19 They work Saturday and Sunday, and they always have. They
20 get laid off from that job. They want to continue looking
21 for jobs that are only Saturday, Sunday jobs. They are
22 saying, "I won't accept a job that is Monday through Friday.
23 And we certainly know normal hours for a waitperson cover
24 Monday through Friday. Should they be allowed benefits if
25 they are limiting themselves to the same hours and days of

1 work that they had before, or should that person be denied
2 because, yes, he is looking for work of 17 or fewer hours
3 per week, but he's not available to all hours and all shifts
4 that are customary to his occupation?

5 MR. SEXTON: Fabulous question.

6 MR. McBRIDE: That's a good one.

7 MS. MYERS: Any input?

8 MR. GONZALEZ: Which has precedence? In the past how
9 did the Department take care of it when there appears to be
10 conflicting sections of the law?

11 MS. MYERS: We pass a rule and get stakeholder input.

12 MR. GONZALEZ: Then they would be like tailor-making
13 availability for each individual claimant. Someone would
14 say, "I only work Monday and Tuesday." Then we might as
15 well throw it out and say, "When are you available?" Each
16 individual could be an exception, and that doesn't appear to
17 be a way to --

18 MS. MYERS: So you would say that that person should be
19 denied because they are not available for all hours?

20 MR. GONZALEZ: They should be denied, because there
21 really is no basis for say which days of the week or which
22 shifts of the day will be suitable for that individual.
23 Because they have met one of those exceptions of the less
24 than 17 hours.

25 MS. MYERS: Okay. Wendy.

1 MS. RADER-KONOFALSKI: Just following up on what Ray
2 asked in terms of what you currently do. Wouldn't you in
3 situations like that find out the individual situation of
4 the person? Let's just say for example somebody has some
5 sort of medical procedure that takes place on Mondays, they
6 are on a dialysis machine or who knows what, and then
7 Saturdays and Sundays they are able to work. Would you then
8 not do some sort of a judgment call in the ESD in which you
9 would say this person clearly is not able to do that, but
10 they can do it on Saturdays and Sundays? Or let's say they
11 have got parenting issues. I don't know. Is it so rigged
12 that there isn't some flexibility for that?

13 MS. MYERS: No. There is not. If somebody is not
14 available for the hours customary to their occupation -- we
15 get it a lot with people who can't work evenings or won't
16 work evenings because they need to be home with their
17 children. Their children are in school during the day. But
18 if their job offers evening shift work, they would be denied
19 unemployment benefits because they are not available for all
20 hours of work that are customary to their occupation
21 regardless of what they have done in the past.

22 Dan.

23 MR. SEXTON: Well, Juanita, I think Ray and Wendy are
24 talking about, you know, previous existing law, how ESD has
25 handled workers up until now, the situation in how this has

1 been applied. And we're talking about a new section here.
2 A new section, new language that speaks to part-time
3 workers.

4 MS. MYERS: You are absolutely correct. And that's why
5 we're raising the issues because the case law is all built
6 up under the premise that the person had to be available for
7 full-time work. We don't have any case law now behind
8 people who are by law allowed to look for work of 17 hours
9 or fewer. So you could argue that that case law doesn't
10 apply, so they shouldn't have to be available for all shifts
11 because the reason they are working part-time is because
12 they can't work full-time, or they can't work these certain
13 shifts. So the question is -- we can do that by rule. My
14 question is should we do that? Is that something we should
15 do or not do? And that's what we're looking for input on.

16 MR. SEXTON: Absolutely.

17 MS. GREINER: If the standard is customary, you can do
18 a reasonable person standard and have it be customary to
19 that standard. If that person is a weekend waiter period
20 and has another job or family responsibilities or something,
21 if you look at what that person does, then that could be
22 factored into the standard.

23 MR. SEXTON: Reasonable person standard. Like that.

24 MR. GONZALEZ: And I disagree because this is
25 addressing hours not the individual's choice of when they

1 can apply those hours to work.

2 MR. SEXTON: Well, if I may, you know, I'm not sure
3 that that's correct. Not laying down each section here and
4 looking at each section, but the way that the "or's" are in
5 here, you know, I'm not sure that's correct.

6 MS. MYERS: Okay. Any other thoughts? input?

7 MR. McBRIDE: I don't know what you mean.

8 MR. SEXTON: Tom doesn't understand what I mean. And I
9 was commenting on what Ray said that this is a solid,
10 standard, black and white 17 hours. And 17 or fewer hours
11 per week by reason of this application of RCW -- okay. So
12 yeah, you got the 17 hours, but that's an "or" right there.
13 You know, then you've got an "or" between 50.20.080 and "or"
14 50.22.020(1) related to the -- and so I'm not sure that
15 that's a --

16 MS. MYERS: Okay. Thank you.

17 Wendy.

18 MS. RADER-KONOFALSKI: I just wanted to corroborate
19 with what Lynn said and what you said. I think since this
20 is a whole new category that's opened up, I think it sort of
21 requires a new definition of what some of these terms mean
22 in the active work search. Because like you said, they are
23 part-time, and it's very limited. It's clearly these people
24 have set up a pattern of working that's connected to
25 whatever the needs are in their environment that makes it

1 different from looking for full-time work. So I think it
2 requires revisiting the difference for what an active search
3 for work would mean. And I like the reasonable person
4 standard. That's reasonable.

5 MS. MYERS: Tom.

6 MR. McBRIDE: One other comment. This is a good
7 question. I think that there has to be some reliance on a
8 precedent that's been set in case law in a statute. Because
9 this is really designed to create, I believe, a greater
10 benefit for part-time workers by allowing for these
11 benefits. It seems to me that there has to be some
12 reference in authority to part-time workers. And it doesn't
13 seem to speak to the question of availability. It could
14 just as well be speaking to the issue of choice, people that
15 want to work part-time by choice. It doesn't address that
16 issue clearly, but I just wanted to put on the record that
17 possibility that I don't think it talks about ability versus
18 options. So I think that's something to consider.

19 MR. SEXTON: You know, I want to agree with Tom. I
20 think that there should be a reliance on, what is it, 40, 50
21 years of case law, you know, maybe not on this section but
22 maybe on other sections, maybe in other place in the law. I
23 think we probably shouldn't be throwing out 50 years of case
24 law. I think that's probably a pretty valid point. We
25 probably need to case by case look at and remember and refer

1 to 40, 50 years of case law.

2 MS. MYERS: Right. We're not saying we are going to
3 throw out 50 years of case law. We are simply saying that
4 the case law we had never spoke to people that worked
5 part-time. The statute doesn't state that you have to be
6 available for all shifts customary your application. It was
7 all developed by case law and was based on individuals
8 having to be available for full-time work. And I don't know
9 whether the individual, if they were eligible because they
10 were looking for part-time work, if those precedence would
11 be the same. We don't know what the courts are going to do
12 in the future. So we are simply looking for input as to
13 what the availability requirements should be for this group
14 of individuals.

15 But if you look at the next section in your bill. It
16 adds a new section to the suitable work factor, which says,
17 "For part-time workers," as defined in RCW 50.20.119,
18 "suitable work includes suitable work under subsection (1)
19 of this section that is for 17 or fewer hours per week."
20 Subsection (1) says, "Suitable work for an individual is
21 employment in an occupation in keeping with the individual's
22 prior work experience, education, or training..."

23 MS. RADER-KONOFALSKI: Where are you? I'm lost.

24 MR. SEXTON: Yeah.

25 MS. MYERS: The next section would be Section 13. The

1 legislature added a new Section (3). You might be missing a
2 page there.

3 MS. HARRIS: Page 14 of the bill. Page 14 of the bill,
4 Section 13.

5 MR. SEXTON: Oh, yeah, I don't have 14. I go from 13
6 to 15.

7 MR. GONZALEZ: Yeah, we are missing 14.

8 MS. HARRIS: You are missing 14, oh.

9 MR. GONZALEZ: I think it's all the even numbers.

10 MR. SEXTON: That's right. We have the odd numbers.
11 You don't have even numbers.

12 MS. HARRIS: I must have -- when I copied it --

13 MR. SEXTON: That was all the stuff you didn't want us
14 to see. Sure, sure, sure.

15 MS. MYERS: We apologize.

16 MS. HARRIS: Yes. I'm sorry. I think when I did it
17 back to back it backed it out.

18 MS. RADER-KONOFALSKI: So read that again.

19 MS. MYERS: Okay. What the law says, RCW 50.20.100 the
20 new subsection (3) says, "For part-time workers as defined
21 in RCW 50.20.119, suitable work includes suitable work under
22 subsection (1) of this section that is for 17 or fewer hours
23 per week." So then when you go back to subsection (1) it
24 says, "Suitable work for an individual is employment in an
25 occupation in keeping with the individual's prior work

1 experience, education, or training..."

2 MS. GREINER: Well, that's it right there.

3 MS. MYERS: Now, we also have to look at their
4 prospects for securing local work in their customary
5 occupation and such other factors as the commissioner deems
6 pertinent.

7 So we're looking at input on whether -- because I'm
8 telling you we don't have a position yet whether they should
9 be available for all hours customary to their occupation, or
10 because they are part-time workers should they be able to
11 limit their availability to days they have worked in the
12 past.

13 MS. GREINER: So based on what you just told us, the
14 clear language is you look at the individual's prior work
15 and experience.

16 MS. RADER-KONOFALSKI: Just like you do for full-time.

17 MS. MYERS: Thank you. The other piece that caused
18 some question is there's another section of the statute that
19 says benefits are denied if an individual is unavailable.

20 MR. SEXTON: Where are you at now?

21 MS. MYERS: It's not in the bill. If an individual is
22 unavailable for one day of the week they get a one-seventh
23 deduction. If they are unavailable for two days a week,
24 they get a two-sevenths deduction. If they are unavailable
25 for three or more days a week, they are denied benefits for

1 the whole week. That's an entirely different section of the
2 statute.

3 MR. SEXTON: How would that apply for a part-timer?

4 MS. MYERS: Let me clarify. Assuming that the answer
5 to the last scenario is, yes, they would only have to be
6 available for work on Saturday and Sunday. In that case we
7 come up with that result. So they report that they are sick
8 Monday, Tuesday, and Wednesday. Do we take the deductions
9 for that week? Do we say, you are unavailable for three
10 days of that week, which is what the statute speaks to, even
11 though they are not unavailable for the days -- assuming we
12 adopt this one premise -- they were not unavailable for the
13 days on which they are looking for work.

14 MR. SEXTON: Of course not. I think Lynn explained it
15 very clearly. In Section 14 that says -- I'm not looking at
16 it, and I don't have it in front of me. But, you know, it
17 sounds like it clearly says past history and experience.
18 You know, so I think it's pretty clear.

19 MS. MYERS: And now we will here from the alternative
20 side of the aisle.

21 MR. SEXTON: Well, if I can continue on that thought
22 just for a second, I think it would be reasonable to agree
23 that if someone is working 40 hours a week and they were
24 sick on Saturday and Sunday, you know, we're not going to
25 say that you were ineligible for work on Saturday and Sunday

1 because you were sick. You know, if we were to flop it
2 around.

3 MS. MYERS: That's correct. But somebody who -- for
4 example, if I use somebody who's a waiter or waitress, if
5 they were sick on a Saturday or Sunday, we would deny their
6 benefits because those are hours customary to your
7 occupation. If you are a teacher and you were sick on
8 Saturday or Sunday, we don't do a deduction because you were
9 available for all hours of work customary to your
10 occupation.

11 In this limited group they are not available for all
12 hours customary to their occupation, but they are available
13 for the two days for which they are looking for work. Wendy
14 and then Ray.

15 MS. RADER-KONOFALSKI: Now, that's a slightly -- if the
16 person were traditionally working Saturdays and Sundays, I'm
17 presuming that those would be customary work periods of that
18 person's job. So someone's not just saying, "I want to work
19 on Thursday and Friday night, which there's no way on earth
20 anybody's going to be working at that --

21 MS. MYERS: Right.

22 MS. RADER-KONOFALSKI: I mean, those were the customary
23 times for a that person. Set up a precedence of having
24 worked that schedule to become eligible for the 17-hour
25 thing, then I think we have a scenario that if that person

1 were sick on either one of those days, then clearly they
2 would -- the wages would be deducted or whatever. But I'm
3 thinking -- and you have gotten yourself definitely into new
4 area, and your questions are really relevant because it
5 hasn't been established yet. But if you take it
6 commensurate to a full-time employee and set up their
7 availability, their hours, their regular schedule, and you
8 are saying it's got to be equivalent, you know, to that,
9 then we have to be the same sort of thinking process for the
10 part-time employee based on what their set schedule had been
11 as long as it was within the customary hours.

12 MS. MYERS: The problem is with the wording of the
13 statute, which you don't have because it wasn't amended last
14 time. 50.21.30 deductions and weekly benefit amount. If an
15 eligible individual is available for work for less than a
16 full week he shall be paid his weekly benefit amount reduced
17 by one-seventh of such amount for each day that he was
18 unavailable for work, provided that if he's unavailable for
19 work for three days or more per week he should be considered
20 unavailable for work the entire week.

21 MR. SEXTON: And Juanita, if I may, is that section
22 referenced here? Why would we assume that that reference
23 applies to part-time workers?

24 MS. MYERS: How could we assume it doesn't?

25 MR. SEXTON: Well, where is it referenced?

1 MS. MYERS: It's simply part of the law. It's in the
2 statute. It was not amended by 6097 to allow an exception.
3 We did not know if it was implied or not thought of. We're
4 just not sure.

5 MR. GONZALEZ: I don't think the Department is in a
6 position nor did the legislature intend to look at part-time
7 workers on a case-by-case basis and determine what is
8 suitable for that individual based on their preference
9 because of the history of the dates of the week.

10 And this again shows on the complexity if you decide
11 to -- well, again, as I mentioned for one individual you
12 would say, Saturday and Sunday, for example, would be your
13 suitable days. Everything else you can be sick and that's
14 all right.

15 Another individual might be Monday and Tuesday the days
16 they work. If they are ill on the other days, that would be
17 all right. So you would have to apply it on a case-by-case
18 basis. And I certainly do not believe that the legislature
19 intended for part-time workers to have individual
20 eligibility expectations and requirements.

21 MS. MYERS: Wendy and then Lynn.

22 MS. RADER-KONOFALSKI: But my understanding of the law
23 is there are no blanket provisions for a category of
24 employee. You know in my work with part-time faculty it is
25 specifically adjudicated on a case-by-case basis. We have

1 tried to have a niche that said if this applies, then bingo,
2 they get it, but that's not how it works. I mean, they do
3 have to have it adjudicated on a case-by-case basis based on
4 certain criteria, and so why would this be any different?

5 MS. MYERS: Lynn.

6 MS. GREINER: That was my comment too. This is in
7 keeping with how ESD already operates.

8 MS. MYERS: Any further comments? Wendy.

9 MS. RADER-KONOFALSKI: I just was wondering. I'm
10 presuming that we have carved a whole new rule here. Is
11 there any federal wisdom on this? Do they do this at all?

12 MS. MYERS: There are states that allow benefits to
13 part-time workers. First off, work search is not a federal
14 requirement. Somebody has to be able to work and available.
15 Work search is not a federal requirement. It's left up to
16 the states to impose, so there's no federal law on that.

17 The federal law, there's been several drafts where they
18 permit states to allow benefits to part-time workers. Some
19 states I think do. I don't know that any state has defined
20 it like this. But no, I don't know of any situation.
21 Because other states may not have the same law as far as
22 earning deductions or their suitable work definition might
23 be different. We haven't studied each state.

24 Tom.

25 MR. MCBRIDE: Are there other examples of ESD applying

1 a case-by-case basis analysis other than challenges through
2 the adjudicated process? Or is it usually done as bright
3 line rule as you can? Because it seems administratively
4 burdensome, as Ray points out, to try to apply these rules
5 individually.

6 MS. MYERS: Well, yes, there is. For example, the
7 other group of people who we have traditionally allowed to
8 seek less than full-time work are individuals with
9 disabilities that prevent them from working full-time. And
10 that is because the suitable work statute requires the
11 Department to consider their physical fitness for work. So
12 if you have somebody who has a chronic condition that limits
13 them to 20 hours a week, we would say, "You only have to
14 look for work for 20 hours a week." And we would issue them
15 a directive and say, "You can do this. Here's what your
16 limitations are." And we would list in there your
17 exceptions: You don't have to look for work where you lift
18 over ten pounds or if it requires standing for certain
19 periods of time. So we do that fairly commonly for people
20 with disabilities.

21 MR. McBRIDE: Do you know what kind of number we are
22 talking about in terms of claimants with disabilities? I
23 wouldn't expect you to know that off the top of your head.

24 MS. MYERS: No, I don't.

25 MR. McBRIDE: Are there any others?

1 MS. MYERS: Where we do it at the initial stage? No.
2 We do it all the time during the adjudicative process. But
3 where we just tell them up front they only have to work --
4 you know, here's your exceptions, in those cases everybody
5 else gets the normal instructions, three employer contacts a
6 week. We send people who have the exceptions what we call a
7 directive. It's basically saying you can look for work
8 whatever fewer hours per week, and here's the exceptions we
9 have approved for you. And we have only done that, that I
10 can think of, for cases of people with disabilities.

11 MR. McBRIDE: Thank you.

12 MS. MYERS: Dan.

13 MR. SEXTON: Juanita, you just struck my curiosity.
14 There isn't anything in this section that's going to affect
15 people with disabilities, is there?

16 MS. MYERS: No.

17 MR. SEXTON: Okay.

18 MS. MYERS: That section on the statute where the
19 Department has to consider an individual's physical fitness
20 was unchanged.

21 Okay. Do we want to take a quick break? That
22 concludes the input on the part-time workers. Do we want to
23 take a 10-, 15-minute break?

24 MR. SEXTON: Ten minutes.

25 MS. MYERS: Why don't we take a 15-minute break, and we

1 will come back and talk about tax -- or my coworkers will
2 talk about tax.

3 (Recess taken.)

4 MS MYERS: I guess we're ready to go. Joining me is
5 Diane Bren, deputy assistant commissioner of the tax branch,
6 and Brenda Westfall, program coordinator. And they both
7 know a lot more about tax than I do. And I hope they will
8 be able to explain some of these, particularly when we get
9 into the terms that need definition.

10 The first subject we are going to talk about, though,
11 is employer penalties. And we wanted to adopt a rule that
12 we will not bill for amounts under \$5. The way the statute
13 is written it says it's 10 percent of the amount of tax due
14 or \$250, whichever is less. Some employers, their tax due
15 is \$19, and so the penalty would be \$1.90. It costs us much
16 more to send out a notice and try to collect that than
17 simply not doing it. What we are not talking about is
18 waiving the penalty. The amount would continue to accrue
19 but we would not bill them until any penalties, fees,
20 interest, or whatever, hit the \$5 mark, then we would send
21 out a bill.

22 Dan.

23 MR. SEXTON: Understanding that I'm sure it's very
24 expensive to send a bill out to someone, in cases under \$5
25 would there be, you know, a way to give them a phone call or

1 send them an e-mail or something? Is there a way that we
2 could address that by rule maybe that, you know, instead of
3 saying not billing them, you know, maybe notifying them by
4 some other means or something? Maybe send a balloon up?

5 MS. MYERS: That would probably cost us more because of
6 the staff time involved. The bills are automatically
7 generated. We are just talking about the generating and
8 postage cost, et cetera. We do not want to hit the papers
9 for trying to collect a nickel.

10 MR. SEXTON: Right.

11 MS. MYERS: We have looked at some studies, and there's
12 quite a few penalties that would fall under \$5 for small
13 employers who have small amounts due. Again, we are not
14 talking about waiving them, but they would simply accrue
15 until they get \$5.

16 MR. GONZALEZ: Is the \$5 cost effective, or should you
17 raise that up to a rate of \$10 or more?

18 MS. BREN: Right now \$5 is a number that has been there
19 for quite a few years that they have not sent some of the
20 statements out. You are right. It's probably closer to --

21 MR. GONZALEZ: If you could you would probably want to
22 raise that.

23 MS. BREN: You know, effectively it would probably be
24 closer to \$25. Right now we are looking at \$5, especially
25 with these penalties being newer and trying to make people

1 -- at least let people know that they were charged with this
2 penalty so they would have the opportunity to correct that.

3 MS. MYERS: The legislation doesn't establish a minimum
4 just a maximum. So there could be cases where it's a penny
5 or five cents or six cents.

6 MR. GONZALEZ: Now, do you have the choice, for
7 example, let's say it's a small amount, rather than billing
8 them individually when they receive their quarterly notice
9 or statement that that could be included in their statement?

10 MS. BREN: We're looking at putting the balance --
11 prior balance back on the report. It used to be on there
12 previously, so that way it would be on their quarterly
13 report when they got that and it would show that small
14 dollar amount on that.

15 MS. MYERS: So we wouldn't be sending out an individual
16 bill.

17 MR. GONZALEZ: A separate notice.

18 MS. BREN: Not a separate billing notice.

19 MR. SEXTON: So if I may, so if an amount is uncharged
20 or is uncharged --

21 MS. BREN: It will be charged. It just won't be
22 billed.

23 MR. SEXTON: If an amount is unbilled, then I wouldn't
24 be charged a late fine or any penalties or anything, or
25 would I?

1 MS. MYERS: For not paying that?

2 MR. SEXTON: For not paying.

3 MS. MYERS: No.

4 MR. SEXTON: So for the time that this is accruing
5 until my fine gets big enough so that I can write a check
6 worthwhile for your time and my time there's no late charges
7 or fines accruing with that?

8 MS. BREN: No. There wouldn't be.

9 MS. MYERS: We are just talking -- probably they might
10 get a fine the next time. They might be late, incomplete
11 format or incomplete or wrong format, and then next time
12 they're fined this \$4, so they add that to the \$1.19 they
13 had last time. Now you have got \$5.19 due, so we sent out a
14 bill. Which is what we are looking at in addition to
15 thinking of putting it back on the quarterly statement.

16 MR. SEXTON: Yeah, I think that sounds like a good
17 idea.

18 MS. MYERS: In the rules we just adopted, that just
19 went into effect, when an employer owes no quarterly tax, we
20 established two penalties. An employer who owes no tax but
21 submitted an incomplete report is penalized \$75 for the
22 first occurrence, \$150 for the second, and \$250 for the
23 third. So that's the report that's incomplete.

24 If that same employer filed a tax report in the
25 incorrect format, the penalty schedule is \$150 for the first

1 occurrence and \$250 for the second and subsequent
2 occurrences. And we have looked at that, and we've already
3 decided that we should probably change that and make the two
4 schedules similar or the same.

5 MS. BREN: Yes.

6 MS. MYERS: And I don't know. Are we thinking at
7 starting with \$75 for both?

8 MS. BREN: Correct. The lower amount.

9 MS. MYERS: The lower amount.

10 MR. McBRIDE: 75, 150 --

11 MS. BREN: 75, 150, and 250 on both.

12 MS. RADER-KONOFALSKI: Is this new? Is the penalty
13 new? Have you always done penalties like this, or is this
14 new because of the legislation? monetary penalties?

15 MS. MYERS: There used to be a \$10 penalty for a late
16 report. There were no penalties for incomplete or incorrect
17 format.

18 MS. RADER-KONOFALSKI: So it's just increased some of
19 the reasons for these --

20 MS. MYERS: And added penalties for the other two
21 reasons.

22 Did either of you gentlemen have a question?

23 Tom.

24 MR. McBRIDE: Thank you, Juanita. Does it continue to
25 double, or does it cap out at \$250 per occurrence?

1 MS. MYERS: It capped out at \$250 for third and
2 subsequent.

3 MR. SEXTON: So you're reading from -- the fines are
4 just in rule?

5 MS. MYERS: Correct. The Department is given the
6 authority to establish a schedule.

7 MR. SEXTON: Okay.

8 MS. MYERS: The law says that it can't be more than 10
9 percent of the tax due or \$250, whichever is less, but
10 beyond that we can set a schedule.

11 MR. SEXTON: Right. So is this -- is this WAC
12 129-310-030, page 3? Is the schedule on here the first --

13 MS. MYERS: Right.

14 MR. SEXTON: So you are just talking about amending
15 this.

16 MS. MYERS: Yes.

17 MR. SEXTON: And making it so that the incorrect format
18 would mirror the incomplete or incorrect format.

19 MS. MYERS: The incomplete tax report, yes. That's all
20 we are talking about there.

21 MR. SEXTON: So the incorrect would mirror the
22 incomplete, okay.

23 MS. MYERS: The other thing we are going to put into
24 rule just to add clarification is there's a separate statute
25 chapter of the law that requires agencies with regulatory

1 authority to provide technical assistance to employers prior
2 to assessing penalties. And we were just going to put in
3 law, that -- excuse me -- in WAC that the Department will
4 not fine or penalize an employer for a first offense if we
5 haven't provided some technical assistance or training or
6 assistance to them.

7 Dan.

8 MR. SEXTON: Juanita, I'm curious. What's the parallel
9 that we use for employees?

10 MS. MYERS: We don't.

11 MR. SEXTON: Well, a claimant making, you know, a
12 mistake for the first time.

13 MS. MYERS: Well, for the claimant if they make a
14 mistake and they have an overpayment you are right, the over
15 payment is assessed immediately. We don't give them a one
16 mistake free ride. They could apply for a waiver and make
17 an offer in compromise.

18 MR. SEXTON: It sounds like that's the pattern here,
19 isn't it?

20 MS. MYERS: The issue is there is another chapter of
21 law, Chapter 4305, which speaks specifically to employers,
22 businesses that says that all regulatory agencies shall
23 develop programs to provide technical assistance. And we
24 have done that. We do presentations to employer groups. We
25 do a quarterly business update that has law changes in it.

1 We send notices. We do presentations, et cetera, seminars.
2 We also do audits.

3 MS. BREN: We do voluntarily audits.

4 MS. MYERS: And this is the first quarter we have
5 started assessing penalties. Am I correct?

6 MS. BREN: Right.

7 MS. MYERS: Even though the law went into effect in
8 January, we started providing technical assistance last fall
9 by announcing to employers that: This is the law. It's
10 going to go into effect. If your reports are late, here is
11 the new penalty. It's \$25 instead of \$10. If you use the
12 incorrect format here is the penalty. If you file an
13 incomplete report here's the new penalty.

14 Last quarter, correct me if I'm wrong, that those
15 employers who did file in the incorrect format got a letter
16 from us saying --

17 MS. BREN: A warning letter.

18 MS. MYERS: It's a warning letter basically saying you
19 filed incorrectly or your report was incomplete. Starting
20 next quarter we are going to assess a penalty if you do
21 that. And we have heard from a lot of employers. What do
22 you mean a penalty?

23 Tom.

24 MR. McBRIDE: Is this reference that you are making
25 right now in this rule packet right here?

1 MS. MYERS: No. It's not in there now. We are talking
2 about adding just for clarification that as required by
3 Chapter 4305 before a personality is assessed -- I don't
4 necessarily know how the rule is going to be worded but --
5 the Department will provide technical assistance before
6 assessing penalties.

7 MR. McBRIDE: Are the amendments reflected in this rule
8 section here the ones that were made previously?

9 MS. MYERS: Yes. They are the ones made previously
10 that went into effect.

11 MR. SEXTON: Juanita, clearly I support the technical
12 assistance, and I think that's a great and worthwhile
13 endeavor on the Department's part.

14 I'm curious about the, you know, the waiving of the
15 fines. So right now we are telling employers that are due
16 fines for this quarter or last quarter, Well, you know,
17 look, we're supposed to give you technical assistance and
18 everything. Here's what you need to do. You didn't do this
19 right, or whatever we are telling them. But we're waiving
20 that and telling them, Look you better -- or you know, maybe
21 you should -- next time you are going to have these
22 penalties. I think that's kind of what I heard you saying.
23 I'm wondering, you know, where do we have the authority to
24 waive fines?

25 MS. MYERS: Well, for example in Chapter 4305, although

1 this is speaking to technical visits, it says, "The owner
2 and operator to shall be given a reasonable period of time
3 to correct violations identified during a technical
4 assistance visit before any civil penalty provided for by
5 law is imposed for those violations.

6 MR. SEXTON: I guess a broad interpretation of that
7 could mean that we give you a quarter to figure it out.

8 MS. MYERS: Yes.

9 MR. SEXTON: You know, I certainly don't remember the
10 Department being as open-minded to employees, to claimants,
11 but I think the language is written a little friendlier to
12 employers. And you know, I guess a broad reading of that
13 one could interpret that you have a quarter or two or
14 whatever to get it straight, to figure it out. Yeah, okay.
15 I'm okay with that if that's how the Department's reading
16 it.

17 MS. MYERS: And actually if you look at the -- well,
18 it's the intent section of 4305, but basically it says that
19 legislature finds that due to the volume and complexity of
20 laws and rules it's appropriate for regulatory agencies to
21 adopt programs and policies to encourage voluntarily
22 compliance. The legislature recognizes a cooperative
23 partnership between agencies and regulated parties that
24 emphasizes education and assistance before the imposition of
25 penalties will achieve greater compliance with laws and

1 rules. Most businesses who are subject to regulation will
2 attempt to comply if they are given sufficient information.
3 So that's what we are looking at.

4 So I just wanted to clarify that we have made every
5 effort to notify businesses of the increase in penalties,
6 and we will continue to do so for new employers when they
7 come on board.

8 Okay. Predecessor-Successor Employers. The law was
9 changed regarding employers who are predecessors and
10 successor employers. One company is purchased by another
11 company, and we call it a successor employer.

12 In addition, we have just had passage of federal law
13 which discusses basically SUDA dumping. And you all know
14 what that is.

15 MS. RADER-KONOFALSKI: I have listened to it several
16 times. I think I know.

17 MS. MYERS: So their law is a little bit different than
18 our law.

19 Last year or earlier this year we tried to come up with
20 a definition of substantial continuity of ownership or
21 management. Then we decided to table that pending the
22 federal legislation. The federal legislation now says that
23 they speak to substantial continuity of ownership,
24 management, or control. They, at least to this point, are
25 not going to define that or are not willing to define that

1 for us. So they are leaving each state kind of
2 floundering -- I don't know if that's the term -- trying to
3 be creative as to how we are going to define substantial
4 continuity of ownership, management, and control. Last year
5 the definition we were looking at was substantial continuity
6 of ownership or management exists if one or more persons,
7 entities, or other organizations controlling the business
8 remain in control of the business after an acquisition or
9 change in form.

10 So I guess we would like input as to what you think
11 constitutes how we should define what's a predecessor and
12 successor for those terms.

13 Dan.

14 MR. SEXTON: Well, I hate to jump in first all the time
15 and especially if business has some points to make here.

16 I was just wondering, thinking. You know, I know I
17 brought it up previously when we were working on this that
18 at the time I knew that L & I and the Department of Revenue
19 was working on the same question. And I still don't know
20 if -- and I don't have their language in front of me either.
21 And I don't know if the agencies have been looking at this,
22 you know, together in any way, shape, or form, but it would
23 be nice, wouldn't it, if there was some consistency from
24 agency to agency?

25 MS. MYERS: Right.

1 MR. SEXTON: If a term like "predecessor" and
2 "successor" meant the same thing at L & I and the Department
3 of Revenue that it did at ESD.

4 MS. MYERS: Okay. Ray.

5 MR. GONZALEZ: Yes. It seems to me that that
6 definition is probably not specific enough to guard against,
7 for example, a small business that shows that it's family
8 owned. Well, the first company, for example, could be the
9 husband, and then it could be another relative who never had
10 a role in this.

11 So I know there are some states that specifically
12 identify family as part of continuity of ownership and
13 management. I know several states had a pretty good
14 definition. I'm not sure which states they were, but I
15 could look into that. But I think that the topic could be
16 revised and tightened up.

17 MS. MYERS: For example, it could be a
18 husband-and-wife-owned business and then they incorporate.
19 And a corporation is a separate person under the law, so we
20 would like to consider that a predecessor-successor
21 relationship.

22 MR. GONZALEZ: Right.

23 MS. MYERS: So you are volunteering to maybe give us a
24 couple definitions from other states?

25 MR. GONZALEZ: Yes. I will look into that.

1 MR. SEXTON: I want to say that I completely agree with
2 Ray on that. And I would be happy to do some research on
3 that too.

4 MS. MYERS: Okay.

5 MR. McBRIDE: Juanita, does the concise explanatory
6 statement reflect what had been considered last year?

7 MS. MYERS: Yes. Those are the comments we got last
8 year.

9 MR. McBRIDE: And the 192-300-050 I'm holding up here,
10 I guess there aren't any changes here.

11 MS. MYERS: No. We didn't put it in there. But
12 because we were anticipating federal legislation we held
13 off. And we got the federal legislation, but they didn't
14 define that term for us.

15 MR. McBRIDE: Okay.

16 MS. MYERS: I believe the Department is submitting
17 legislation because there are a few pieces of our law that
18 don't match the federal SUDA dumping law, so we are looking
19 at introducing legislation that would correct state law to
20 be in conformity with the new changes. We don't have a bill
21 number or anything. So look to the governor's office, our
22 current governor.

23 MS. BREN: One of the things that is missing is the "or
24 control."

25 MS. MYERS: Our statute speaks to substantial

1 continuity of ownership or management. And federal law says
2 substantial continuity of ownership, management, or control.

3 Another rule we are looking at is the assignment date
4 of the penalty for a successorship. Now, if we find
5 somebody that after investigation we determine that somebody
6 was making an attempt to avoid the successorship provision.
7 Do we assign the start date of the penalty, because it's an
8 increase in their tax rate, from the day we discover that
9 increase or calendar year, correct?

10 MS. BREN: Or back to when they did it.

11 MS. MYERS: Or back to the date of the violation.
12 Because the law just speaks about a penalty, but it doesn't
13 say when it starts.

14 MR. McBRIDE: So you are proposing three possibilities.

15 MS. MYERS: Yes. The date they discovered it. The
16 date the violation actually happened. When they reported
17 incorrectly. Or do we do the next calendar year.

18 MR. McBRIDE: Thanks.

19 MS. MYERS: And I know there's some questions about the
20 next calendar year, because if the company, say, goes out of
21 business, then there's no penalty.

22 MR. GONZALEZ: Well, if it's the date of discovery,
23 that means it goes back at least to the beginning of the
24 calendar year.

25 MS. WESTFALL: It could be the middle of the calendar

1 year.

2 MS. MYERS: Sometimes it happens and we go back to last
3 year. Do we go back and raise their tax rates and assess
4 them the balance from the date of penalty or start from when
5 we discovered it?

6 MS. BREN: And if you look back at the last year, if
7 they did the transfer on 12/31 and they just did it for that
8 year, then there's really no penalty for them, so that
9 wouldn't really work either.

10 MR. GONZALEZ: How far back could you go? As long as
11 they have been doing this? If you have the rules, could you
12 go back to -- let's just say five years back? Is there a
13 limit?

14 MS. BREN: There's a three year statute of limitations.

15 MR. GONZALEZ: So you could go back three years
16 possibly.

17 MS. MYERS: Dan.

18 MR. SEXTON: I don't see why there's any ambiguity
19 here. We don't treat -- again, this is different than how
20 we treat claimants. It's completely different than how we
21 treat claimants. And I don't see why, you know, we're
22 treating employers like, well, gosh, when should we start
23 looking at this? Should we look at the time that it was
24 discovered or next year or whenever? We would never, never,
25 ever, ever think about treating a claimant that way, you

1 know. It would ridiculous to suggest. No one would ever
2 suggest that a claimant -- well, we will just forget about
3 from the moment that we overpaid you last year. Just forget
4 about that. And I can't understand why, you know, there's
5 any ambiguity here. If it was prior than whatever time we
6 could statutorily -- if that's a word -- go back to, if it
7 was beyond three years, well, then that's as far back as we
8 would go.

9 MS. MYERS: Okay. The cases are a little bit different
10 because we are talking about weeks of benefits. We have
11 specific weeks that a claimant claims. This is at a period
12 of time the employer did something to try to avoid the
13 successorship provision to get a lower tax rate by
14 reincorporate or something -- they engaged in SUDA dumping.
15 We are talking about raising their tax, which we can only
16 raise at certain times of the year.

17 MS. BREN: It only allows for one rate a year for our
18 system the way it is right now.

19 MS. MYERS: So we have to decide at what point we start
20 it -- last year, this year, next year.

21 MR. SEXTON: And I'm saying why wouldn't you say, you
22 know, if this activity has been going on for five years, why
23 wouldn't you say, well, you owe us for three years?

24 MR. GONZALEZ: This is a concern for employers that are
25 subsidizing those employers that are doing this, so it would

1 seem to me, and I speak for myself, that other employers
2 would seek to provide the maximum penalty that the
3 Department can provide under the current statute.

4 MR. SEXTON: Here, here.

5 MS. MYERS: Okay. The next bullet on the paper here is
6 actually just a technical change on under our current WAC
7 192-300-050(3) where we lists operating assets. The last
8 sentence of that section says, "Employees are not operating
9 assets." Under the federal law employees are considered
10 assets of the corporation or of the business. So we are
11 simply going to strike that sentence of the bill.

12 MS. BREN: And that would include employees in the
13 example sentence above that.

14 MS. MYERS: Right. Add them up above: real or
15 personal property, tangible or intangible, land, buildings,
16 machinery, equipment, et cetera. We would add employees
17 there.

18 Any questions, concerns about that? No. Okay.

19 The next bullet is talking about defining professional
20 employer associations or PEOs. I'm going to ask Diane to
21 speak to this.

22 MS. BREN: And this is obviously an issue again with
23 the SUDA dumping bill that was passed. And right now as far
24 as making sure the experience transfers, we need to look at
25 -- I think we've defined leasing companies right now and

1 referral companies, but we don't have a definition for a
2 PEO, so we want to make sure and include that as well. What
3 we would like to do is look at establishing subaccounts for
4 a PEO for each client company, and they would bring their
5 experience over to that subaccount rather than coming into
6 the -- bringing their experience into one large account.

7 MS. MYERS: For example, like temporary agencies who
8 hire out that place employees in other businesses. That
9 temp agency is considered the employer, and they get the tax
10 rate not the client tax company. PEOs are companies that
11 take over like the HR work or the payroll, et cetera, for a
12 bunch of client companies, but they don't in most cases
13 actually do the hiring. They may do the hiring, but they
14 usually don't. But they are doing the administrative work
15 for a group of companies.

16 And so what we are talking about there is to define
17 them as this group of PEOs; and rather than have them have
18 the experience rating, continue to have the experience
19 rating for each of their client companies, because those
20 companies are still operating separately. It's just --

21 MR. SEXTON: Where the people are actually working.

22 MS. MYERS: Yes. But the PEO is generally using -- is
23 generally taking care of the administrative work.

24 MS. BREN: Right.

25 MS. MYERS: For that company.

1 MS. BREN: They say it's a co-employment, but normally
2 the control of the employees is still maintained with the
3 client. And that's what we are looking at is the experience
4 would still stay with that client, because nothing has
5 really changed for the employee. In fact, most of them are
6 not even aware that there was a change.

7 MS. MYERS: They don't know that their company is under
8 an umbrella. She's right. The client companies make the
9 decision to layoff, hire, fire, et cetera, and so the
10 experience rating should stay with that client company.
11 Unlike with temporary where they just refer out to say,
12 temporary jobs, these people are permanent employees of that
13 company, and in many cases they don't even know that their
14 employer has now joined this professional employer
15 organization.

16 And then we also need to define what actually is a
17 client company. I don't think we have come up with that
18 yet.

19 MS. BREN: No.

20 MR. McBRIDE: Was this all under 192-310-010? Was this
21 just underneath, just the next amended section?

22 MS. WESTFALL: Actually it's 50.04.245. I don't think
23 it's in here.

24 MS. MYERS: It's a statute?

25 MS. WESTFALL: It's a statute. We don't have a law on

1 it yet.

2 MR. SEXTON: Does that address temp employers, temp
3 agencies?

4 MS. MYERS: Yes. That statute currently defines
5 temporary agencies, services agencies --

6 MS. WESTFALL: Referral agencies.

7 MS. MYERS: And in all those cases the agencies are
8 considered the employers, because they make the hiring and
9 firing decisions, and they refer their employees out to work
10 or lease them out to other companies. Where the PEO is
11 different in that it does the administrative work but the
12 client companies are responsible for their own employees.

13 MR. SEXTON: So is the difference here -- you know, I
14 don't know if one or the other can go back and forth or if a
15 PEO is always a PEO and a temp agency is always a temp
16 agency. But if one does the hiring and the firing, is that
17 how we determine, you know, if it's a duck or not?

18 MS. BREN: I think there would be a lot of factors in
19 there. If you look, say, in a contract for a PEO it's going
20 to say they reserve the right to do the hiring and firing
21 and stuff, but they don't do it. In fact, the pertinent
22 control factors are usually still with the client. So
23 that's one of the things we are looking at -- what we would
24 look at for control.

25 MS. MYERS: Right. And another difference is, for

1 example I work for a temporary agency, Kelly Services, and
2 they refer me out on a job, and the employer hates me. I
3 work there a couple days and they fire me.

4 MR. SEXTON: Been there.

5 MS. MYERS: I'm still not fired. I'm employed by Kelly
6 Services. I still work for Kelly Services. I go back to
7 Kelly Services and say, "This client company fired me. Can
8 I have another job?" So in this case if that client company
9 fired them they are not going to go back to the PEO and say,
10 "I still work for you. Can you find me another job
11 somewhere?"

12 MR. SEXTON: So in this case I work for a temp agency,
13 and the temp agency sends me out to a construction company
14 that their work is up and down and their workforce is up and
15 down. And I'm working there a couple of days, and then I'm
16 back to the temp agency, and my employment hasn't changed.

17 MS. MYERS: Correct. You are still an employee of
18 Kelly Services or whatever temp agency.

19 MR. SEXTON: Or whatever temp agency. What a system.

20 MS. MYERS: Other questions? suggestions? comments?

21 When we get some draft rules out it will probably be
22 easier once we figure out what we want to say.

23 We did transition from the Standard Industrial
24 Classification system to the North American Industrial
25 Classification System at the beginning of this year. But

1 just to let you know, there were some employers who were
2 caught up in different classifications than they had been
3 before, so there may be some changes in tax rates for those
4 employers.

5 MS. BREN: Well, this really has to do with the maximum
6 tax rate of 6 percent or 6.5 that list a certain SIC or
7 equivalent NAICS code that would fall under those maximum
8 cap rates for next year. And we are using the equivalent
9 NAICS code. We're not using the SIC code.

10 MS. MYERS: And the equivalent NAICS in some cases has
11 brought in more companies than -- the company might have
12 been coded one way under the SIC, but when we transferred
13 that over to the NAICS we picked up a lot more companies.

14 MR. SEXTON: There's less classification?

15 MS. MYERS: They just do it a little bit differently.
16 When they transition from the SIC to the equivalent NAICS
17 code, well, it's not an exact science as far as
18 transitioning.

19 MS. BREN: Instead of looking at the services, NAICS
20 looks more at the product. So if something was more of an
21 agricultural type SIC, when it goes to the NAICS it may
22 include the wholesalers that weren't in there previously
23 that would be included in that. So it just converts a
24 little differently, which actually ends up with a few more
25 employers getting the cap rate, which isn't going to affect

1 many people. It depends on how many people we have that are
2 going to get that cap to begin with.

3 And you end up with a few that end up with a lower
4 rate, and I don't think they are going to complain too much.
5 But that's basically the effect. And we are only talking
6 about a couple thousand, roughly 2000 more that might have
7 been brought in that wouldn't have been brought in there if
8 we went strictly by the SIC.

9 MS. MYERS: About 2000 more employers are capped at 6.0
10 as opposed to 6.5.

11 MS. BREN: Right.

12 MS. MYERS: The law capped it for certain industries,
13 agriculture and, you know -- I don't remember. But she's
14 just saying when we transitioned it, it brought in a couple
15 thousand more than had been identified in SIC.

16 So what the overall -- well, we hadn't had SIC before
17 anyway, so I don't think there would be a loss to the trust
18 fund because we never went that high before anyway.

19 And definition of terms related to tax rates. And I am
20 going to turn this over to Diane now, just because I don't
21 understand some of these terms myself.

22 MS. BREN: And I'm still learning them. I will let you
23 know that since I have only been here since March. But
24 mostly it's just due to the new bill.

25 There's been some terms as well that we lost some cases

1 because they said we didn't have them defined. So we want
2 to make sure we have defined, what the flat social cost
3 factor is, what the combined rate factor is. Those are some
4 of the terms used in calculating that.

5 There's nothing on there. And it will probably be a
6 lot easier to understand once we get the draft language out
7 there. And it's just something that's really been recently
8 looked at. So I think this is I think last week. It's very
9 new.

10 But again, it's just, you know, how far out we round,
11 the percentage is rounded to two decimal places, some
12 certain things like that. And it's just clarifying that.

13 MS. MYERS: Industry average, array factor rate -- and
14 there's just a lot of different terms.

15 MS. BREN: How many digits of the NAICS code we are
16 going to use the calculating their rate factor.

17 MR. SEXTON: Well, Juanita, is there times, places,
18 situations where maybe some of these terms might relate to
19 or be used, say, at the Department of Revenue or something
20 like that and we can look for consistency there again?

21 MS. MYERS: I don't know. I don't think they use these
22 terms.

23 MR. SEXTON: Feds?

24 MS. MYERS: No.

25 MS. BREN: And, you know, we can look at that.

1 MR. GONZALEZ: Now, in terms of -- you mentioned the
2 number of digits. Are they being increased? Is that the
3 intent?

4 MS. BREN: Well, since before we were using SIC. So
5 since we are now using NAICS, we are looking at the first
6 four digits of the NAICS code for the industry average.

7 MR. GONZALEZ: Not in terms of calculating the rate?
8 You are not talking about that, are you?

9 MS. BREN: This is for the array factor.

10 MR. GONZALEZ: So would that change the number of
11 digits in terms of the tax rate for the employer? Is that
12 going to stay the same? In other words --

13 MR. SEXTON: It depends.

14 MR. GONZALEZ: Is it going to increase the number when
15 the calculation is made, whatever their area may be, in
16 calculating the amount? Is that going to change?

17 MS. BREN: I don't believe so, Ray. But we will get
18 back to you on that one.

19 MS. MYERS: And on these, as Diane said, when we get
20 these drafted up hopefully they will make more sense to you
21 and to me and hopefully to everybody.

22 I think that's all we were going to talking about today
23 as far as input we needed on these rules, unless you had
24 additional comments or questions.

25 MS. RADER-KONOFALSKI: I do have an additional

1 question. The information you have given us, this is all --
2 this exists? This is all in law right now, right?

3 MS. MYERS: Yes.

4 MS. RADER-KONOFALSKI: And these are all existing RCWs?

5 MS. MYERS: Yes.

6 MS. RADER-KONOFALSKI: Okay. I just want to make sure
7 that what I have here is --

8 MS. MYERS: Yes. And you will get another mailing as
9 soon as the benefit rules are finalized. Well, they are
10 final. They are just getting signed.

11 MR. SEXTON: Do we have a time frame on that?

12 MS. MYERS: Hopefully this week.

13 MR. GONZALEZ: Could you provide maybe the complete --
14 you know with the number of pages missing?

15 MS. MYERS: Yes.

16 MS. HARRIS: Yes. Sorry about that.

17 MS. MYERS: We have another meeting in Olympia on
18 Thursday to cover these same topics. And then we will go
19 back and look at drafting some emergency rules. And we hope
20 to get them out to you to look at before January 2 so you
21 can see them. But remember that as emergency rules they
22 will expire after 180 days.

23 MR. SEXTON: Something like that.

24 MS. MYERS: I think it's 120 days.

25 MR. SEXTON: 120.

1 MS. MYERS: They will expire after 120 days. So if we
2 can't get things changed in time at that one, it's a
3 temporary matter. But we will try to get them out to you --
4 some drafts out before we file them as emergency rules so
5 you can actually look at some of the comments.

6 MR. SEXTON: No telling what the next 120 days will
7 bring.

8 MR. McBRIDE: Will the emergency rule proposals that
9 are coming out include all that we have talked about today,
10 the tax and benefits and everything?

11 MS. MYERS: Yes.

12 MR. SEXTON: It will all be completely different than
13 what we talked about today.

14 MS. MYERS: Okay. Well, if there's no additional
15 comments or questions, we will go ahead and adjourn. And I
16 thank you again for your participation.

17 MR. GONZALEZ: Thank you for your presentation.

18 MR. McBRIDE: It was very helpful, thank you.

19 MS. MYERS: Thank you, Diane.

20 (Whereupon, at 12:00 p.m.,
21 proceedings adjourned)
22
23
24
25

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
County of Kitsap)

I, Marcie L. Johnson, a Certified Court Reporter
in and for the State of Washington, do hereby certify:

That the foregoing transcript of proceedings was taken stenographically before me and transcribed under my direction; that the transcript is an accurate transcript of the proceedings insofar as proceedings were audible, clear and intelligible; that the proceedings and resultant foregoing transcript were done and completed to the best of my abilities for the conditions present at the time of the proceedings;

That I am not a relative, employee, attorney or counsel of any party to this matter, and that I am not financially interested in said matter or the outcome thereof;

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal on this 28th day of December, 2004,
at Port Orchard, Washington.

NOTARY PUBLIC in and for the
State of Washington, residing
at Port Orchard.

(Lic. #2744)

